

### **REMARKS**

Applicant has carefully reviewed the Final Office Action mailed October 18, 2006 and offers the following remarks to accompany the above amendments.

Applicant has amended claims 1, 12, 13, 15, 21, and 22 by deleting the term "backup." This amendment deletes words that Applicant added by a previous amendment, and is therefore supported by the Specification.

Applicant appreciates the telephonic interview conducted on December 7, 2006 between Applicant's representative John H. Vynalek and Primary Patent Examiner Paul H. Kang and Patent Examiner Yemane M. Gerezgiher. During the interview, U.S. Patent Number 6,205,557 B1 to Chong et al. (hereinafter "Chong") and U.S. Patent Number 5,812,748 to Ohran et al. (hereinafter "Orhan") were discussed with respect to the rejection of claim 1 under 35 U.S.C. § 103(a). Applicant discussed that Chong by itself or when combined with Ohran does not teach or suggest each and every element of claim 1. Although no agreement was reached, the Examiners suggested amending the claims to recite the role of the media gateway maintaining and storing a table of active media connection information as well as the backup server periodically initiating and sending a request to the media gateway for the table of active media connection information in order to more clearly define the invention. Applicant, though, maintains its position that Chong by itself and when combined with Ohran and the other references cited by the Patent Office, does not teach or suggest each and every element of claim 1, as well as each and every element of the other claims in the Application, as more fully discussed below.

Similarly, Applicant appreciates the comments the Patent Office provided in Footnote 1 on page 2 of the Office Action mailed October 18, 2006. However, Applicant submits that the claims as amended include sufficient details and features such that they are patentable over the prior art of record as more fully discussed below.

Before addressing the rejections, Applicant provides a brief summary of the present invention so that the remarks relating to the references are considered in the proper context. The present invention is designed to facilitate operation of call servers on a packet based network. Call servers handle the call processing on a packet based network, and may be subject to the occasional failure. When a failure occurs, call processing shifts from one call server to another call server. For call servers to be aware of currently existing call flows of other call servers,

prior to and at the time of a failure, a call server sends requests to media gateways about active connections of the other call servers. The media gateways respond to these requests with information about the active connections. In short, the call server proactively secures information about the active connections of other call servers from the media gateways rather than requesting information about active connections from the other call servers or relying on the other call servers to send the information.

Claims 1, 6-15, 17-20, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chong in view of U.S. Patent No. 5,430,709 to Galloway (hereinafter “Galloway”) and further in view of Ohran. Applicant respectfully traverses. To establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the combination of references. For the Patent Office to combine references in an obviousness rejection, the Patent Office must prove there is a suggestion to combine the references. For the Patent Office to prove that there is a suggestion to combine the references, the Patent Office must do two things. First, the Patent Office must state a motivation to combine the references, and second, the Patent Office must support the stated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). MPEP § 2143.03. If the Patent Office cannot establish obviousness, the claims are allowable.

Claim 1, as amended, recites “sending a request, from the call server, to a media gateway, for information regarding said active media connection; and receiving said information at the call server.” Chong does not teach or suggest these limitations. Specifically, Chong does not teach or suggest a call server requesting information from a media gateway and receiving the requested information. Chong discloses that active call information is copied from an active call server either directly to a stand-by call server or indirectly to the standby call server through an interface server. (See Chong, Abstract; col. 3 lines 64-66; and col. 4, lines 28-36). Even assuming that the interface server in Chong is the same as a media gateway, a point which Applicant does not concede, Chong clearly does not disclose the stand-by server requesting active call information from the active server or from the interface server, and then receiving the information requested. Therefore, Chong is deficient in teaching or suggesting each and every element of claim 1. This deficiency is not cured by combining Chong with Galloway and Ohran.

Galloway teaches a method of monitoring communication connections temporarily established between respective pairs of entities, but makes no reference to call servers. (See

Galloway, col. 1, lines 58-60). As such, Galloway makes no reference to a call server, a media gateway, or a call server requesting active media connections from a media gateway. Thus, Galloway does not teach or suggest a call server sending a request for information about an active connection to a media gateway and receiving the requested information from the media gateway.

Ohran discloses a file server computer and a backup computer each with mass storage devices. The file server mirrors the data on the file server and the backup computer by writing the data to each one's mass storage device. The mirroring is done by mass storage emulator on the file server, which sends the information to the backup computer when the information is written to file server's mass storage device. (See Ohran, col. 4, lines 12-19). The Patent Office argues that Ohran teaches a "backup server initiating a request to receive information (mirroring) about call information and receiving the information at the backup server when an active server fail (sic) in recovering information..." (Office Action mailed October 18, 2006, page 7, lines 2-6). The Patent Office is incorrect. Although Ohran discloses the mass storage emulator on the file server sending the information to the mass storage access program on the backup computer, no where does Ohran disclose the backup computer requesting the information. (See Ohran, col. 4, lines 12-15). Thus, Ohran does not teach or suggest a call server, a media gateway, or a call server sending a request for information about an active connection to a media gateway and receiving the requested information from the media gateway.

The combination of Chong with Galloway and Ohran does not teach the claim element of the call server sending the request to a media gateway and receiving information regarding active media connections from the media gateway; therefore, the combination with Galloway and Ohran does not cure the deficiency of Chong. Accordingly, the combination of Chong with Galloway and Ohran does not teach or suggest each element, and the combination fails to establish obviousness. The Patent Office has failed to establish *prima facie* obviousness. Accordingly, claim 1 is non-obvious and, therefore, is allowable. Withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a) is respectfully requested.

Further, Applicant submits that Ohran is non-analogous art, and, as non-analogous art, Ohran is not a proper reference and is not properly combinable with Chong and Galloway. MPEP § 2141.01(a). To be a proper reference, the reference must either be in the field of endeavor of the Applicant's invention, or the reference must have "logically commended itself to

an inventor's attention in considering his problem." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992). As discussed above, Ohran is directed to a file server and a backup computer each with mass storage devices. The present invention is directed to call servers on a packet-based telephone network that request active media information from a media gateway. Clearly, then, since Ohran is not directed to a packet-based telephone network and does not involve call servers and media gateways, Ohran is not in the field of endeavor of the present invention.

The Patent Office argues that even assuming that Ohran is non-analogous art, Ohran can be applied "at least for the reason that it maintains record of information by recovering server failure (primary server) via a backup computer system eliminating the need for time consuming copying of information from primary to secondary/backup server and vice versa (sic) in keeping the record synchronized." (Office Action mailed October 18, 2006, page 4, lines 6-10). Ohran is directed to a mass storage emulator in the file server, which mirrors the information on the file server's mass storage device and sends the information to the backup server's mass storage device. Accordingly, Ohran discloses an interaction directly between a file server and a backup computer system without the backup server requesting the information. Therefore, nothing in Ohran would have logically commended itself to the inventors of the present invention. Accordingly, since Ohran is neither in the field of endeavor of the present invention, nor would it have logically commended itself to the inventors of the present invention, Ohran is not a proper reference to support a rejection under 35 U.S.C. § 103(a).

Additionally, even assuming that Ohran is a proper reference to support a rejection under 35 U.S.C. § 103(a), a point which Applicant does not concede, there must be some teaching or suggestion in Chong, Galloway, and Ohran to provide the motivation to modify these references, and a separate motivation to combine these references. The Patent Office must articulate a motivation for modifying Chong and Galloway and a motivation for combining Chong with Galloway and Ohran to show obviousness. In addition, the Patent Office also must support each such articulated motivation with actual evidence found in Chong, Galloway, and Ohran. The Patent Office has not supported its articulated motivations with any evidence found in Chong, Galloway or Ohran.

The Patent Office states that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Ohran related to the direction of

initiating a request been (sic) from the backup server and have modified the already combined teachings of Galloway and Chong in order to eliminate the need for time consuming copying of information from primary to secondary/backup server and vice versa in keeping the record synchronized.” (Office Action mailed October 18, 2006, page 7, lines 7-13).

First, as Applicant mentioned above, Ohran does not teach or suggest a backup server requesting information. As such, the Patent Office does not support that portion of the articulated reason because it cannot do so since it is nowhere to be found in Ohran. Second, the Patent Office has not cited to any portion of Chong or Galloway to support modifying Chong, by itself, or in combination with Galloway. In other words, the Patent Office has not cited to any portion of Chong or Galloway where those references teach or suggest “time consuming copying from primary to secondary/backup server and vice versa in keeping the record synchronized.” Therefore, the Patent Office has not provided any evidence supporting a need to modify Chong and Galloway to eliminate “time consuming copying of information from primary to secondary/backup server and vice versa in keeping the record synchronized.” Therefore, a person of ordinary skill in the art having the systems of Chong and Galloway would not need to look to Ohran. For this additional reason, the addition of Ohran to the combination is improper.

Moreover, if Ohran was combined with Chong and Galloway, one or more of the references would have its principle of operation changed by the combination. Just the combination of Chong and Galloway changes the principle of operation of Chong. Specifically, Chong explicitly indicates that the active call server sends call information to the standby call server. Since Chong already has a mechanism to deliver information to the backup call server, this combination changes Chong’s principle of operation, and thus, the combination is non-obvious. Adding the backup computer system of Ohran that runs a mass storage program that mirrors disks or storage devices on the backup computer system would further change the principle of operation of Chong (and Galloway and Ohran as well). Since the addition of Ohran would change the principle of operation of the references, the addition of Ohran to the combination is not proper for this additional reason.

Based on the reasons discussed above, the Patent Office has failed to establish *prima facie* obviousness of claim 1. Accordingly, claim 1 is non-obvious and, therefore, is allowable. Withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a) is respectfully requested.

Claims 8-11 depend from claim 1. Since dependent claims contain all of the limitations of the claims from which they depend, claims 8-11 are non-obvious for at least the same reasons as claim 1. Accordingly, claims 8-11 are similarly allowable and withdrawal of the rejection of claims 8-11 under 35 U.S.C. § 103(a) is respectfully requested.

Claim 12, as amended, recites a call server sending a request and receiving requested information at the call server. As discussed above, the combination of Chong, Galloway, and Ohran does not teach or suggest a call server sending a request and receiving the requested information. Thus, the Patent Office has failed to establish *prima facie* obviousness of claim 12. Accordingly, claim 12 is non-obvious and, therefore, is allowable. Withdrawal of the rejection of claim 12 under 35 U.S.C. § 103(a) is respectfully requested.

Claim 13, as amended, likewise, recites a call server sending a request and receiving requested information at the call server. As discussed above, the combination of Chong, Galloway, and Ohran does not teach or suggest a call server sending a request and receiving the requested information. Thus, the Patent Office has failed to establish *prima facie* obviousness of claim 13. Accordingly, claim 13 is non-obvious and, therefore, is allowable. Withdrawal of the rejection of claim 13 under 35 U.S.C. § 103(a) is respectfully requested.

Claim 15, as amended, recites receiving a request for information from a call server and sending the information to the call server. As discussed above, the combination of Chong, Galloway, and Ohran does not teach or suggest receiving a request for information from a call server and sending the information requested to the call server. Thus, the Patent Office has failed to establish *prima facie* obviousness of claim 15. Accordingly, claim 15 is non-obvious and, therefore, is allowable. Withdrawal of the rejection of claim 15 under 35 U.S.C. § 103(a) is respectfully requested.

Claims 17-20 depend from claim 15 and are non-obvious for at least the same reason. Accordingly, claims 17-20 are similarly allowable and withdrawal of the rejection of claims 17-20 under 35 U.S.C. § 103(a) is respectfully requested.

Claim 22, as amended, likewise, recites receiving a request for information from a call server and sending the information to the call server. As discussed above, the combination of Chong, Galloway, and Ohran does not teach or suggest receiving a request for information from a call server and sending the information requested to the call server. Thus, the Patent Office has failed to establish *prima facie* obviousness of claim 22. Accordingly, claim 22 is non-obvious

and, therefore, is allowable. Withdrawal of the rejection of claim 22 under 35 U.S.C. § 103(a) is respectfully requested.

Claims 6 and 7 depend from claim 1. Since dependent claims contain all of the limitations of the claims from which they depend, claims 6 and 7 are non-obvious for at least the same reasons as claim 1. Accordingly, claims 6 and 7 are similarly allowable and withdrawal of the rejection of claims 6 and 7 under 35 U.S.C. § 103(a) is respectfully requested.

Claim 14 recites sending a request for information from a backup call server and receiving information at the backup call server. As discussed above, the combination of Chong, Galloway, and Ohran does not teach or suggest a backup call server sending a request for information and receiving the information. Thus, the Patent Office has failed to establish *prima facie* obviousness of claim 14. Accordingly, claim 14 is non-obvious and, therefore, is allowable. Withdrawal of the rejection of claim 14 under 35 U.S.C. § 103(a) is respectfully requested.

Claims 2-5 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chong in view of Galloway and Ohran and further in view of what would have been obvious to one of ordinary skill in the art at the time the invention was made. Applicant respectfully traverses. The standards for obviousness are set forth above.

Claims 2-5 and 16 depend from claims 1 and 15, respectively. Since dependent claims contain all of the limitations of the claims from which they depend, claims 2-5 and 16 are non-obvious for at least the same reasons as claims 1 and 15. Accordingly, claims 2-5 and 16 are similarly allowable and withdrawal of the rejection of claims 2-5 and 16 under 35 U.S.C. § 103(a) is respectfully requested.

Claims 21 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,724,747 B1 to Arango et al. (hereinafter “Arango”) in view of Ohran. Applicant respectfully traverses. The standards for obviousness are set forth above.

Claim 21, as amended, recites receiving from a call server a request for information and transmitting information to the call server. Claim 23 recites that a backup call server sends a request to the media gateway and receives the information. The Patent Office admits that Arango does not teach the request originating from a backup call server to receive the information about the active media connection and receiving the information at the backup call server (Office Action mailed October 18, 2006, p. 12, lines 10-13). The Patent Office cites to

Ohran as teaching the limitation. This is the same limitation that the Patent Office asserts is taught by Ohran with respect to claims 1, 12, 13, 15, and 22. As discussed above, Ohran does not teach or suggest a backup server requesting information and receiving the information requested. In addition, for the same reasons as set forth above with respect to claims 1, 12, 13, 15, and 22, Ohran is not properly combinable with Arango, which is directed to media connections in a packet-based telecommunication network, because it is non-analogous art and would change the principle of operation of Arango. Moreover, the Patent Office's stated motivation to combine Ohran with Arango is the same as the stated motivation to combine Ohran with Chong and Galloway, and fails to compel the combination for the same reasons set forth above. Thus, the combination of Arango and Ohran cannot teach or suggest each and every claim element of claims 21 and 23. Since the combination does not teach or suggest the claim element, the combination does not establish obviousness, and claims 21 and 23 are allowable.

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



John R. Witcher, III  
Registration No. 39,877  
P.O. Box 1287  
Cary, NC 27512  
Telephone: (919) 654-4520

Date: January 15, 2007  
Attorney Docket: 7000-500